RECENT VIRGINIA TAX CASES.

CONSTITUTIONALITY, CONSTRUCTION AND REPEAL OF STATUTES.

Title of Act.—Code 1904, § 1040a, the original enactment of which was entitled "An act providing for the taxation of shares of stock issued by banks located in counties and cities," although it provides for deduction of shares of stockholders resident in another city or county than the bank, is not violative of Const. 1902, § 52, prescribing that no law shall embrace more than one subject which shall be expressed in its title. Tresnon *v.* Board of Sup'rs of Henrico County (Va.), 90 S. E. 615.[1]

Uniform Taxes.—Code 1904, § 1040a, touching the taxation of shares of stock in banks and providing for deduction of shares of stockholders resident in another city or county than that of the bank, is not violative of Const. 1902, § 168, providing for uniformity of taxation upon the same class of subjects within the territorial limits of the authority levying the tax.

"It is provided by the act of March 18, 1915, that neither counties nor cities shall levy a tax for local purposes on bank stock in excess of $1.15 on every $100 of the assessed valuation thereof. Yet, subject only to that maximum limitation, we find no specific constitutional requirement that the tax rate on bank stock in the city of Richmond and the county of Henrico shall be the same. The city and county are not within the same 'territorial limits of the authority levying the tax,' in the sense of section 168, and, therefore, the uniformity provision is not applicable. Day *v.* Roberts, 101 Va. 248, 43 S. E. 362; Moss *v.* County of Tazewell, 112 Va. 878, 72 S. E. 945." Tresnon *v.* Board of Sup'rs of Henrico County (Va.), 90 S. E. 615, 616.

Statute Construed Strictly.—Where the interpretation of a statute is doubtful as to the authorization to levy a tax, the tax cannot be collected as a tax must be plainly authorized before the citizen can be charged therewith. City of Richmond *v.* Drewery-Hughes Co., 90 S. E. 635.

The intent and purpose of a statute, claimed to tax intangi-

1. Iverson Brown's Case, 91 Va. 762, 21 S. E. 357, 28 L. R. A. 110; District Road Board *v.* Spilman, 117 Va. 201, 84 S. E. 103; Commonwealth *v.* C. & O. Ry. Co., 118 Va. 261, 87 S. E. 622.

ble personal property of a non-resident, originating from his loans to residents of Virginia, being in doubt, the doubt must be resolved in favor of the lender, since laws imposing a license or a tax are strictly construed, more strongly against the government and in favor of the citizen. Jamison *v.* Commonwealth, 90 S. W. 640.

Repeal of Statute by Implication.—Repeals by implication are not favored. Following this rule it has been held that § 1040a of the Code,[2] providing that the shares of the holders of bank stock be deducted from the list furnished for taxation on certificate that they are owned and returned for taxation in any city or county, is not repealed by the Bank Act of March 18, 1915. Tresnon *v.* Board of Supervisors of Henrico County, 90 S. E. 615.

TAX ON BANK STOCK—SEGREGATION.

In a proceeding by mandamus instituted by the Board of Supervisors of Henrico county and various residents therein owning stock in certain banks and trust companies located in the city of Richmond, against the Commissioner of Revenue of the city of Richmond to compel him to deduct from the aggregate shares of stock of those institutions the shares owned by the defendants in error, who are residents of the county of Henrico, in accordance with the provisions of § 1040a of the Code of 1904, it was held that the Act of Feb. 28, Code of 1904, § 1040a, § 3 of which prescribes: "Whenever any commissioner of the revenue, before closing his assessment rolls or tax lists, shall receive from the cashier of a bank furnishing a list of the holders of the bank stock as required by law for * * * purposes of State taxation, or from the owner of any stock mentioned therein, a certificate of the commissioner of the revenue of the county or city of the State in which the owner of such stock lives, stating that certain shares of the stock mentioned in said list are owned by a resident of that county or city, and that the same have been returned for taxation for that year in such city or county, then the said commissioner of the revenue to whom the said list * * * has been furnished, shall deduct from the aggregate value of the shares set forth in said list the aggre-

2. Act Feb. 28, 1890, re-enacted Acts 1902-3-4, p. 431.

gate value of the shares mentioned in said certificate," is still in force and is not repealed by the Bank Act of March 18, 1915.

Section 1040a does not violate § 168 of the Constitution requiring that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.[3]

TAX ON CAPITAL OF MERCHANTS—SEGREGATION.

Apart from the manifest desire and purpose of the Legislature, as shown throughout this legislation, to adopt a more equitable system of taxation than had theretofore existed, it is clear that one of its chief purposes was to reduce the rate of taxation upon intangible personal property in order thereby to induce a more general return of such property, and to bring about uniformity in the rate of tax thereon by establishing a fixed rate applicable alike to all localities.

By an ordinance of the city of Richmond approved April 9, 1915, the city assessed the capital employed by merchants at the rate of $1.40 on the $100, and now appeals from the decision of the lower court, holding that its power to levy such a tax was limited to 30 cents on the $100. It is true that the city of Richmond, under its charter, has plenary powers of taxation, but its power to tax any particular property is subject to any limitation that may be placed thereon by the Legislature.

By an act approved March 15, 1915, the General Assembly installed a new system of taxation, under which the several kinds and classes of property were segregated, specifying and determining upon what subjects local taxes might be levied. Acts Extra Session 1915, p. 119. By this act all taxable real estate and all taxable tangible personal property is set apart and made subject to local taxation only. It is then declared that:

"All insurance taxes and licenses on insurance companies and all intangible personal property, rolling stock of all corporations operating railroads by steam, and all other classes of property, not hereinbefore specifically enumerated in this act, be and the same are hereby segregated and made subject to state taxation only; provided that nothing herein contained shall prevent any

3. Tresnon *v.* Board of Sup'rs of Henrico County (Va.), 90 S. E. 615.

city from levying a tax upon said segregated intangible personal property assessed to the residents therein at a rate not to exceed thirty cents upon one hundred dollars of assessed valuation thereof."

The foregoing language is clear and comprehensive, and, standing alone, leaves it free from doubt that the Legislature limited localities to 30 cents on the $100 as the maximum rate of taxation that they could impose upon taxable intangible personal property.

It is admitted, as it must be, that the capital of merchants belongs to the class known as intangible personal property. The city of Richmond, in maintenance of its right to levy the tax here called in question, insists that the capital of merchants has not been segregated, but has been excepted from the operation of the act, resting that contention upon the following language of the same paragraph, containing the prescribed limitation of 30 cents, namely:

"Except that the capital of merchants shall not be subject to state taxation, but may be taxed locally as prescribed by law."

This contention cannot be sustained. The state taxes the capital of merchants on the basis of their purchases, calling it a "license," and the purpose of the language relied on was clearly to exclude the idea that the state intended to tax the capital of merchants with both a license and an ad valorem tax. The act had already, by clear and specific language, segregated and set apart all taxable intangible personal property as one of the subjects that the state alone could tax, providing that localities might levy a tax thereon not exceeding 30 cents on the $100 and it is not to be supposed that in the next breath the Legislature intended to emasculate what it had just done by excepting from the operation of the act one of the largest classes of intangible personal property, thereby rendering its action meaningless.

The whole legislation on this subject makes it quite clear that under the act of March 15, 1915, the city of Richmond was limited in its power to tax the capital of merchants to 30 cents on the $100. The language of the so-called exception, "that the capital of merchants shall not be subject to state taxation, but may be taxed locally as prescribed by law," meant that such capital should not be subject to state taxation on the ad valorem basis, so long as the state continued to tax merchants with a license. The

language, "but may be taxed locally as prescribed by law," meant that the local tax must be in accordance with the general law of the state, and had reference to the preceding provision of the same section, placing a maximum tax of 30 cents, by localities, upon intangible personal property. City of Richmond *v.* Drusery-Hughes Co. (Va.), 90 S. E. 635.

The decision of this case has created considerable interest.

TAX ON RAILROAD ROLLING STOCK—SITUS.

There being nothing in the Constitution limiting the power of the legislature to fix the situs of personal property for taxation when that property has no actual situs, it is within the power of the legislature to change the common-law situs of railroad rolling stock for taxation.

Where the lines of a street railroad company are located entirely within the limits of a city, its situs for taxation is in that city, but, if the lines extend beyond the corporate limits, it is within the power of the legislature to apportion the whole system for taxation as it may choose.

Acts 1914, c. 135, providing for the apportionment and assessment of railroad rolling stock for local taxation, does not violate Const., § 128, requiring assessments of real estate and personalty for municipal taxation to be the same as the assessment for state taxation, since that section nowhere fixed the location of the rolling stock for taxation, and, although Tax Bill, § 27 (Code 1904, p. 2202), required railroad property to be taxed at the principal office within the state, Acts 1914, c. 135, expressly fixed the situs for state assessment as well as local in the various counties, cities, and towns, nor does it violate Const., § 64, providing that no general or special law shall surrender or suspend the right of the state or any political subdivision to tax corporations and corporate property; it being within the power of the legislature by general law to change the situs of all property for taxation, and the statute expressly reserving to every municipality the right to tax corporate property. Commonwealth *v.* Chesapeake & O. Ry. Co. (Va.), 87 S. E. 622.

TAX ON INTANGIBLE PERSONAL PROPERTY—SITUS.

The difficulties attendant upon the taxation of intangible prop-

erty elsewhere than at the domicile of the owner have largely preserved the domicile of the owner as the proper situs for purposes of taxation.[4] The federal constitution does not prohibit a state from taxing her own citizens upon bonds belonging to them, although they were made by debtors resident in other states and secured by mortgage on real estate there situated.[5]

Such bonds or other evidences of debts are property within the state, which the state may tax at its discretion. Bonds can be taxed where they are permanently kept, because, by a notion going back to very early law, the obligation is, or originally was, inseparable from the paper or parchment which expressed it.[6]

The jurisdiction of the state of his domicile, over the creditor's person, does not exclude the power of another state in which he transacts his business, to lay a tax upon the credits there accruing to him against resident debtors, and thus to enforce contribution for the support of the government under whose protection his affairs are conducted. The jurisdiction of the latter state rests upon considerations which are more fundamental than that notes have been given, or that the credits were evidenced in any particular manner.[7]

The legal fiction expressed in the maxim mobilia sequuntur personam yields to the fact of actual control elsewhere. And in the case of credits, though intangible, arising from a foreigner's

4. Southern Pac. Co. *v.* Kentucky, 222 U. S. 63, 56 L. Ed. 96, 32 S. Ct. 13.

5. Hotchkiss, 100 U. S. 491, 25 L. Ed. 558.

6. Selliger *v.* Kentucky, 213 U. S. 200, 53 L. Ed. 761, 29 S. Ct. 449.

7. In Metropolitan Life Ins. Co. *v.* New Orleans, 205 U. S. 395, 51 L. Ed. 853, 27 S. Ct. 499, it was held that those engaged in the business of lending money in a state, being nonresidents of the same, might be taxed upon the capital employed in such business, precisely as the state could tax the capital of its own citizens. Burke *v.* Wells, 208 U. S. 14, 52 L. Ed. 370, 28 S. Ct. 193.

In the case of New Orleans *v.* Stempel, 175 U. S. 309, 44 L. Ed. 174, 20 S. Ct. 110, "It appeared that the assessed credits were evidenced by notes secured by mortgages on real estate in New Orleans; that these notes and mortgages were in that city, in the possession of an agent, who collected the proceeds and the interest as it became due, and deposited the same in the bank in New Orleans to credit of the plaintiff, the guardian of infant owners, who, like herself, were domiciled in the State of New York. The tax was sustained." Orient Ins. Co. *v.* Beard, 221 U. S. 358, 55 L. Ed. 769, 31 S. Ct. 554.

entering into business in the state of the debtor's domicile the control adequate to confer jurisdiction may be found in the sovereignty of the debtor's domicile. The debt, of course, is not property in the hands of the debtor; but is an obligation of the debtor, and is of value to the creditor, because the debtor may be compelled to pay; and power over the debtor at his domicile controls the ordinary means of enforcement. The foreigner doing business cannot escape taxation upon his capital by removing temporarily from the state evidence of credits in the form of notes. Under such circumstances, they have a taxable situs in the state of their origin.[8]

It is within the power of the state, unless constitutional restrictions interfere, to divorce property of this kind from the person of its owner and give it a situs of its own for purposes of taxation, and this is not infrequently done, particularly in regard to mortgage loans and the securities and obligations of municipal bodies.[9]

Money deposited in a bank by a resident agent to the credit of a non-resident is taxable if it is under the control of and used by the agent in his principal's business within the state, but not where it is deposited solely for the purpose of transmission through the bank to the non-resident principal in another state.[10]

Statutory Provision.—Section 9 of the act of March 17, 1915, Acts 1915, p. 163, is as follows:

"The provisions of this section of this schedule shall apply with equal force to any person or corporation representing in this state business interests that may claim a domicile elsewhere, the intent and purpose being that no nonresident person or corporation, either personally or through an agent, shall transact business here without paying to the state a corresponding tax with that exacted of its own citizens, and all bills receivable, obligations or credits and other intangible assets arising from the business done in this state are hereby declared assessable within this state and at the business domicile of said nonresident person or corporation, his or its agent, or representative."

The schedule referred to in this provision of the statute is,

8. Orient Ins. Co. *v.* Board, 221 U. S. 358, 55 L. Ed. 769, 31 S. Ct. 554.
9. 37 Cyc. 806.
10. 37 Cyc. 803.

schedule C of the general tax law, as amended and which classifies intangible property—bonds, notes, etc.—intended to be subjected to taxation in this state.[11]

Business Domicile in State.—In the case of Commonwealth *v.* United Cigarette Machine Co., 89 S. E. 935, it was held that a corporation employed in a manufacturing business in this state acquired a commercial domicile here for purposes of taxation.

A corporation chartered in England and authorized to do business in any part of the world established its principal office in the state of Virginia, wherein it manufactured the machines it sold and transacted all other business which included that of lending money. The main office was transferred from England to Virginia to escape payment of English income taxes. Code 1904, § 1103b, as amended by Act Feb. 14, 1912 (Acts 1912, c. 29) provides that corporations chartered or organized under laws of other states or counties and authorized to manufacture articles made from metal, cotton, or wood, and to mine ores or coals, may carry on in Virginia the business authorized by their charters, and shall for all purposes be deemed and treated as local corporations. The foreign corporation manufactured cigarette making machines principally of metal. Held that, despite the ordinary rule that intangible property is taxable only at the domicile of the owner, the corporation acquired a commercial domicile in the state of Virginia, and its intangible property was taxable therein. Commonwealth *v.* United Cigarette Mach. Co. (Va.), 89 S. E. 935.

This case is distinguished in the case of Jamison *v.* Commonwealth (Va.), 90 S. E. 640, not only on the ground of the establishment of a business domicile within the state but also upon the ground that the bills receivable were kept at the company's offices within the state and adhered to such offices at that place and that their actual situs had always been there.

The court said, "We do not gather from the evidence in the case that Jamison was regularly engaged in lending money in Page county, Va., 'as a business conducted for a profit' within the meaning and intent of the provisions of the statute, supra. Certainly it cannot be arbitrarily said that because Jamison had made

11. Jamison *v.* Commonwealth, 90 S. E. 641.

many loans in Page county, and had more money that he would like to invest in that county in bonds or notes secured by trust deed, the evidences of the loans which are the subject of this controversy are assessable for taxation in Page county by reason of the debtors having their residence in the county, or because the land which is security for the bonds or notes is situated in Page county, since the statute, instead of so providing, expressly stipulates that such bonds or notes are assessable, if at all, at the business domicile of such nonresident in this state. It seems clear to us from the reading of the statute as a whole that, so far as applicable to this case, its meaning is that where a nonresident, person or corporation, comes into Virginia and establishes a place of business to buy bonds or notes, and thus loan money and thereby have obligations due him arising from that business, he is to be taxed upon such obligations, just as a citizen of Virginia engaged in a like business is taxed, the tax thereon to be assessed at the business domicile of such nonresident person or corporation, his or its agent or representative."

As applicable to the Jamison case the act provides that it shall apply with equal force to any person representing in this state business interests that may claim a domicile elsewhere, the intent and purpose being that no nonresident person, either personally or through an agent, shall transact business here without paying a corresponding tax to that exacted of citizens of the state, and all bills receivable arising from the business in this state are assessable within this state and at the business domicile of the nonresident person, his agent or representative.

Construing this statute the court said: "Clearly the statute contemplates the establishing in this state of a 'business,' and, in the case of an individual, as in this case, personally conducted by him or through an agent domiciled in the state. Manifestly the tax is not sought to be imposed as one upon the business, but upon the person representing in this state the foreign interests whose business is 'here' conducted by such person; that is, where the business is conducted 'here' by the nonresident, either in person or by an agent, and when he or his agent has acquired a domicile here, the tax is imposed. If this were not true, a nonresident who had made a single loan in this state, evidenced by a note or bond, secured by deed of trust on land or otherwise,

would be liable to be taxed on the evidence of the loan or credit, although the lender of the money took the evidence of the credit to his domicile in another state and paid taxes on it there."

Just what constitutes a business domicile of a nonresident within the state, where such nonresident has no agent or representative, is not attempted to be defined in the opinion in the Jamison case. It is merely determined that Jamison had no such domicile in the state. The opinion reads "clearly the statute contemplates the establishing in this state of a 'business,' and, in the case of an individual as in this case, personally conducted by him." The opinion then continues to state that the tax is not sought to be imposed as one upon the business, but upon the person representing in this state the foreign interests whose business is here conducted by such person. But the statute makes no reference to the establishment of a business, it refers to business interests. There is manifestly a distinction between business interests and the establishment or conducting of a business in the sense of the continuous operation of a mercantile or a manufacturing enterprise. While business interests may not arise from a single transaction, "transacting business" comes nearer to being complied with by a single transaction than almost any other terms the legislature could have used. In the very next sentence after the one stating that the statute contemplates the establishing of a business, the court says, "manifestly the tax is not sought to be imposed as one upon the business, but upon the person representing in this state the foreign interests whose business is 'here' conducted by such person." The decision is undoubtedly correct in the conclusions that a nonresident who makes a single transaction in the state or who concludes a transaction through a broker located in the state has no local business domicile for purposes of taxation. The facts in the Jamison case show that he had made numerous loans and had done considerable business in Page county, which excludes all argument of a single transaction, and yet it is decided that he had no business domicile there.

It is here suggested that what the legislature meant by "business domicile" is the county or corporation of the state in which a nonresident representative of business interests transacts busi-

ness connected therewith, and that the court in the Jamison case is too much influenced by the absence of a fixed office or place of business in which is kept the bills receivable, etc., which is contrary to another principle entertained by the court that the act does not seek to impose the tax as one upon business done in the state, but upon the person representing in the state the foreign interest whose business is conducted in the state by such person. It is a tax upon the person at his business domicile and not upon his business.

Again, it is suggested that the court was influenced by the fact that the bonds and other evidences of debt were not kept in the state. Their situs together with that of the residence of the person as fixing the situs of the debt for purposes of taxation, is a principle departed from in modern cases. Anciently, especially under the feudal system, taxes were due the sovereign in return for protection, principally of the person. This theory should not be applied in the case of bonds and other evidences of debts enforceable in another state. If the state of residence can not enforce an obligation, it can afford little protection to a resident who holds the written evidence. A resident of another state who holds a bond secured by deed of trust in Virginia must ask the state of Virginia to enforce it. In return for extending this right to him, the state should demand a tax upon his right, equally with that imposed upon her citizens. This, it seems, the legislature has to an extent attempted to do.

Agent in State.—"The general rule is that intangible property has no situs of its own for the purpose of taxation, and is, therefore, as a general thing assessable for taxes at the place of its owner; but the contention of plaintiffs in error is that there are exceptions to this general rule which are as well established as the rule itself, and that this case falls within one of the exceptions, namely, where intangible property becomes localized, in the hands of an agent for insurance, in a state different from that of the domicile of the owner, and is used in the state in a permanent and continuous business, the maxim, 'mobilia sequunter personam,' upon which the general rule is based, ceases to apply, in so far as it affects the right of the latter state to impose taxes, citing as supporting this contention City of New Orleans

v. Stempel, 175 U. S. 309, 20 Sup. Ct. 110, 44 L. Ed. 175; State Board of Assessors, etc., *v.* Comptor National D'Escompte de Paris, 191 U. S. 390, 24 Sup. Ct. 109, 48 L. Ed. 232." Commonwealth *v.* United Cigarette Mach. Co. (Va.), 89 S. E. 935, 938.

In Jamison *v.* Commonwealth (Va.), 90 S. E. 640, it was held that Jamison had no agent in the state. The facts are interesting and necessary to determine what the court decided. Jamison testified that he had loaned a great deal of money in Page County but that he had no agent in such county to make the loans or for any other purpose, that he was well acquainted with lands there and generally knew the desirability of the loan, but in doubtful cases he would go to the county to look the property over; that Landram (an attorney) frequently made application for parties for loans, which was also done by others, as well as the parties desiring the loans themselves, that if he had any doubt about the title he would have Landram examine it; that the deeds of trust securing the loans applied for by Landram were made to Landram as trustee and that Landram never was his agent and that he never paid him any compensation nor did Landram ever collect any money for him but that the collections were made through the Page Valley National Bank. As to Landram the witness testified "I was treating him just as I would any other broker. Just like I would go to Baltimore and buy a bond from Baker, Watts & Co., brokers. Mr. Landram would have an application for a loan. He would write me, say, that he had a $5,000 bond of which so and so was the maker, secured on certain property, and ask me whether I wanted the bond. I would know the party upon the mere mention of his name, because I have known practically everybody in Page county, and am familiar with the properties in Page county. If it looked good to me, I would take the bond; otherwise I would not."

Upon being shown certain deed books in which two deeds of trust appeared to be marked satisfied on the margin by "C. S. Landram, Agent for J. V. Jamison," the attorney for the commonwealth asked the witness, Jamison, to explain the use of the term "agent" as it there appeared, and in answer to which Jamison said:

"I do not know by what authority Mr. Landram used the term 'agent,' but the fact is that upon receiving payment of several

bonds I remember, after having canceled them, I have sent them to Mr. Landram with a letter, requesting him to take them to the clerk s office and enter satisfaction on the margin of the records for me. This may have occurred frequently, and you may find more instances of it. But in most cases the releases have been made by the Page Valley National Bank, to whom I would send the bonds for collection and remittance."

The testimony of Jamison was substantiated by that of Landram. Landram further testified with regard to releasing the deeds of trust that he designated himself as the agent of Jamison for the purpose of conforming to the language of the statute authorizing marginal releases.

The Commonwealth introduced no testimony to controvert that given by Jamison and his witness, Landram, the only testimony from the Commonwealth being that given by the examiner of records, his deputy, and the commissioner of the revenue for Page county, as to how this assessment here in question was made up; that is, from the records in the clerk's office of Page county. "As we read the evidence quoted above, and which the circuit court certified as being all the evidence adduced in the case by either party, it proves: (1) That the bonds or notes in question, assessed for taxation against Jamison in the county of Page, Va., were not in the state; (2) that Jamison had no agent in this state for any purpose, not even for the purpose of collecting the bonds or notes when due and remitting the proceeds; and (3) that these bonds or notes, since they were purchased or taken up as loans by Jamison, have been at all times in his possession at his place of residence in the state of Maryland, where they have been regularly 'rendered'—that is, listed and returned—for taxation, and the tax thereon paid." Jamison *v.* Commonwealth, 90 S. E. 641.

There is an additional fact in this case which was evidently not in evidence and which was not before the supreme court of appeals, that is that Landram was cashier of the Page Valley Bank. This fact would tend somewhat to show the agency of Landram.

It was held that Jamison was not represented in the state by an agent within the meaning of the Acts 1915, ch. 117, § 9.

The fact that Jamison did not consider or intend that Land-

ram should be his agent is not determinative of the fact of agency; for, while a mutual intention to create the relation of principal and agent is generally an essential element of agency, if the facts are such as to create an agency as a matter of law, the actual intention of the parties and the name they give to their relation are immaterial. They cannot agree that facts which in law establish the relation of agency shall not establish that relation between them or shall establish a different relation.[12]

The fact that Jamison paid Landram no consideration for acting for him does not prevent the relation of the parties being that of agency. While a consideration is necessary to the validity of the agreement between the parties themselves, it is not necessary as to third persons, especially in the case of an implied agency.

An agency may be implied as well as express. The instance in which an agency is most readily implied is a course of dealings and transactions concerning a specific property or class of property. Of vital consideration in determining the fact of agency in every such case is a similarity of acts in the course of dealing. If the evidence shows that a person has upon other occasions conducted similar transactions and business for another the cases generally hold in the absence of qualifying facts that such person is the latter's agent.

In Neibles *v.* Minneapolis, etc., R. Co., 37 Minn. 151, 33 N. W. 332, it is said: "From the natural improbability that one should voluntarily, without authority, assume to act for another, settling his obligations for a considerable period of time, and from the fact that such conduct would naturally come to be known by the assumed principal, the fact of agency may be presumed." [13]

It is not necessary that there should have been a series of transactions, for even a single transaction may suffice to establish the relation of principal and agent. In Wilcox *v.* Railway Co., 24 Minn. 269, it is said: "A single act of an assumed agent,

12. 2 C. J. 434; Sternaman *v.* Insurance Co., 170 N. Y. 13, 62 N. E. 763, 88 Am. St. Rep. 625, 57 L. R. A. 318.

13. For other cases, see 2 C. J. 438, et seq.

and a single recognition of his authority by his principal, if sufficiently positive and comprehensive in their character, may be sufficient to prove agency to do similar acts." [14]

When a principal by any such acts or conduct has knowingly caused or permitted another to appear to be his agent either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances. This rule is particularly true where the principal has knowingly by such acts and conduct recognized the agency through a long course of dealing or in many transactions. 13 Cyc. 1237.[15]

The evidence shows and Jamison necessarily admits that Land-

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14. Anderson *v.* Johnson, 74 Minn. 171, 77 N. W. 26, 27.

In an action for the conversion of stock delivered by plaintiff to one S. to secure plaintiff's account with defendant, a stockbroker, it appeared that plaintiff had delivered stocks to S. for defendant only once before, but plaintiff's checks were received by defendant through S., who was intrusted with the receipts for funds and stocks to be returned to plaintiff, and defendant had placed negotiable securities in S.'s hands for delivery to plaintiff. Held, that plaintiff had the right to rely on the authority of S. to act for defendant. Briggs *v.* Kennett, 28 N. Y. Supp. 540.

"There appears to have been but one instance of a transaction precisely similar to that now in question, but, although agency to do a special act is not to be generally inferred from one instance alone, yet this prior act of Stout's in receiving from the plaintiff negotiable securities and delivering them to the defendants for the plaintiff's account, without remonstrance from them by reason of his having so assumed this duty, goes far as a justification for the plaintiff's reliance upon his agency for this purpose. See Graves *v.* Horton (Minn.), 35 N. W. 569. In connection with this we have the fact that the plaintiff's checks were received by the firm through Stout, who was in turn intrusted by them with receipts for funds and stocks to be returned to the plaintiff." Briggs *v.* Kennett, 28 N. Y. Supp. 540, 541.

15. Pettinger *v.* Alpena Cedar Co. (Mich.), 141 N. W. 535, 537.

A principal may be bound by the appearance of authority, which his conduct of his business permits his agent to have. Columbia Mill Co. *v.* National Bank (Minn.), 53 N. W. 1061. There is no reason why the estoppel should not operate in favor of the state as well as in favor of an individual dealing with the agent.

ram appears as agent in releasing different deeds of trust in the deed books. Landram was then agent for one phase at least of these business transactions, and yet the court held that Jamison did not transact business in the state through an agent. According to the decision, it would seem that Landram was agent for one purpose but not for another. It is unfortunate that the court did not go deeper into this question of agency for a particular purpose. If it had, its decision would be more explanatory of what constitutes an agency.

While Jamison may not have compensated or expressly encouraged Landram to act for him, yet he apparently acquiesced in what Landram did and accepted the benefits thereof, without taking any steps to deny or refute the apparent agency.

Another point that should be considered in this connection is the distinction between a general and a special agency. In order to come within the statute it is sufficient that there be an agent to represent the business interest of the principal. This a special agent may do. A special agency is more readily implied from a course of dealing than is a general agency. A general agent is apparently what Jamison meant when he stated that Landram was not his agent.

Recording Tax on Deed of Trust.

Construing § 13 of the tax bill providing for a tax on deeds of trust and mortgages which provides that, "on deeds of trust or mortgages the tax shall be assessed and paid upon the amounts of bonds or other obligations secured thereby," it was held, following the proper and well-recognized construction of the statute, that the tax should be computed upon the principal amount of the bonds or other obligations secured by the deeds of trust or mortgages, and not upon the interest thereon. Virginia-Blue Ridge Railway *v.* Kidd (not yet reported). The decision is in accordance with an article entitled, "Tax on Interest for Recording Deed of Trust," in 2 Va. Law Reg. (N. S.) 491.

Commissions of Commissioner of Revenue.

Code 1904, § 509, as amended by Acts 1912, c. 115, provides that the commissioner of revenue shall extend the total of the county, district, or city levies, to show the aggregate amount

thereof assessed for state taxes, for which he shall receive such compensation as the supervisors may deem reasonable. The Segregation Act (Acts 915, c. 85) surrendered to all counties, etc., taxes on realty and tangible personal property theretofore assessed for state as well as for local purposes, and by section 2 subsec. 2a, provided that on real and personal property taxes assessed for local purposes and "heretofore assessed for state purposes," a commissioner of revenue should be paid by the counties not less than the commission allowed "by law" for the assessment of state taxes, which commission was 3½ per cent. on the amount of assessments up to $10,000. A county board of supervisors fixed a commissioner's compensation for extending all levies for local purposes prior to 1915 at $300 per annum, and, after increasing their normal levy for local purposes by $5,693, an amount which would have been previously assessed for state purposes, allowed the commissioner $300 on the normal levy, and a 3½ per cent. commission on the increase. Held, that such commission was correct and that the commissioner was not also entitled to commission on the amount of normal taxes for local purposes not "heretofore assessed for state purposes."

"We readily see that under such a statute the commissioners of revenue would be entitled to the commission 'allowed by law' when the act was passed for the assessment of state taxes on all taxes extended for local purposes on the real estate and personal property. But, with the words 'and heretofore assessed for state purposes' in the statute, we at once see that commissioners of revenue are not entitled to such commissions on all taxes for local purposes. The taxes on which the statute provides such commissions shall be paid must also fulfil the designation or requirements of said restrictive words in the statute—i. e., such taxes must have been 'heretofore assessed for state purposes'—and taxes 'heretofore assessed' for local purposes are plainly excluded from those on which such statute provides that such commissions shall be paid. The normal taxes for local purposes did not fall into that category or fit in with such designation." Washington County *v.* Ryan (Va.), 89 S. E. 889, 890.

T. B. BENSON.